



UNITED STATES DEPARTMENT OF COMMERCE
National Telecommunications and
Information Administration
Washington, D.C. 20230

Dr. Donald Stockdale, Jr.
Chief, Wireless Telecommunications Bureau

SEP 25 2019

Dr. Giulia McHenry
Acting Chief, Office of Economics and Analytics

Mr. Julius P. Knapp
Chief, Office of Engineering and Technology

Federal Communications Commission
445 12th Street, SW
Washington, DC 20554

RE: Auction of Priority Access Licenses for the 3550-3650 MHz Band (Auction 105; AU Docket No. 19-244)

Dear Dr. Stockdale, Dr. McHenry, and Mr. Knapp:

This letter is in response to the draft *Public Notice* in connection with the above-referenced auction for Priority Access Licenses (PALs) in the 3550-3650 MHz band released on September 5, 2019 and circulated for tentative consideration by the Federal Communications Commission (FCC or Commission) at its September 26, 2019 open meeting.¹ The draft *Public Notice* would announce that the Commission intends to commence the PALs auction on June 25, 2020.

The National Telecommunications and Information Administration (NTIA), the Department of Defense (DOD), and the FCC have been working in close collaboration for several years to develop and implement the FCC's rules governing the Citizens Broadband Radio Service (CBRS) in the 3550-3650 MHz band.² In 2015, the Commission, pursuant to NTIA's 2010 "Fast Track" report and subsequent recommendations, reallocated this band from Federal use to shared Federal/non-Federal use by adding primary allocations for non-Federal fixed and

¹ See FCC Fact Sheet and Draft *Public Notice*, Competitive Bidding Procedures for Auction 105 (Priority Access Licenses for the 3550-3650 MHz Band), AU Docket No. 19-244, FCC-CIRC1909-03 (Sept. 5, 2019), available at <https://docs.fcc.gov/public/attachments/DOC-359494A1.pdf> (Draft *Public Notice*).

² See, e.g., Spectrum Task Force Requests Information on Frequency Bands Identified by NTIA as Potential Broadband Spectrum, *Public Notice*, ET Docket No. 10-123, DA 11-444 (Mar. 8, 2011), available at https://docs.fcc.gov/public/attachments/DA-11-444A1_Rcd.pdf (seeking comment on, *inter alia*, NTIA's recommended reallocation of the 3550-3650 MHz); see also Letter from Karl Nebbia, Assoc. Admin., Off. of Spec. Mgt, NTIA, to Julius Knapp, Chief, Off. of Eng. and Tech., FCC (Jan. 19, 2011), available at https://www.ntia.doc.gov/files/ntia/publications/ntia_fcc_letter_115_mhz_01192011.pdf.

mobile services.³ It also adopted rules to govern the use of competitive bidding for assigning Priority Access Licenses (PALs) in the 3550-3650 MHz band pursuant to Section 309(j) of the Communications Act of 1934, as amended (47 U.S.C. § 309(j)), and in conformity with the existing rules set forth in Part 1, Subpart Q of the Commission's rules.⁴ In October 2018, the FCC modified the licensing and technical rules for this valuable mid-band spectrum to, *inter alia*, increase flexibility so that licensees can efficiently deploy next generation 5G networks, promote investment in next generation networks, support a greater variety of technologies and use cases, and facilitate international spectrum harmonization.⁵

The frequencies in the 3550-3650 MHz band are "eligible frequencies" as described in Section 113(g)(2) of the NTIA Organization Act, as amended, 47 U.S.C. § 923 (g)(2)(B). Accordingly, the FCC must notify NTIA 18 months prior to the anticipated commencement of an auction of such frequencies pursuant to 47 U.S.C. § 923(g)(4)(A).⁶ This provision also requires NTIA, at least 6 months prior to the commencement of the auction and after review by the Office of Management and Budget, to notify the FCC of estimated relocation or sharing costs and timelines for such relocation or sharing.

The timelines in the NTIA Organization Act, as amended, are necessary to allow NTIA and Federal agencies to meet the transition planning milestones in the statute and to provide transparency and critical information to bidders in advance of an auction. DOD has informed us that the Navy, the Marine Corps, and the Army intend to submit a transition plan to identify these Federal entities' estimated sharing costs that have or will be incurred in connection with the sharing of these eligible frequencies. NTIA is making every effort to accelerate the transition planning, Technical Panel review, publication, and notification procedures set forth in Section 113(h) of the NTIA Organization Act, as amended, 47 U.S.C. § 923(h), and NTIA's regulations governing relocation of and spectrum sharing by Federal government stations.⁷

³ See Amendment of the Commission's Rules with Regard to Commercial Operations in the 3550-3650 MHz Band, *Report and Order and Second Further Notice of Proposed Rulemaking*, GN Docket No. 12-354, 30 FCC Rcd 3959, 3972 ¶¶ 34-36 (2015), available at https://docs.fcc.gov/public/attachments/FCC-15-47A1_Rcd.pdf.

⁴ See *id.* at 3999-4009 ¶¶ 122-154; 47 C.F.R. Part 1, Subpart Q.

⁵ See Promoting Investment in the 3550-3700 MHz Band, *Report and Order*, GN Docket No. 17-258, 33 FCC Rcd 10598 (2018) (2018 3.5 GHz R&O), available at https://docs.fcc.gov/public/attachments/FCC-18-149A1_Rcd.pdf (*pet. for recon. pending*).

⁶ See, e.g., Letter from Julius Genachowski, Chairman, FCC, to Lawrence E. Strickling, Assistant Secretary of Commerce for Communications and Information, U.S. Dep't of Commerce (Mar. 20, 2013), available at <https://docs.fcc.gov/public/attachments/DOC-319708A1.pdf>. This notification was sent before the FCC commenced the AWS-3 rulemaking (GN Docket No. 13-185) in July 2013.

⁷ See NTIA, *Manual of Regulations and Procedures for Federal Radio Frequency Management*, Annex O (Sept. 2017 rev. of Sept. 2015 ed.), available at https://www.ntia.gov/files/ntia/publications/redbook/2017-09/O_17_9.pdf; 47 C.F.R. Parts 300, 301 (2018).

Moreover, the Communications Act of 1934, as amended, and the FCC's competitive bidding rules require the establishment of a reserve price based on such estimated costs.⁸ In apparent conflict with these statutory provisions and rules, the draft *Public Notice* says "[t]here are no circumstances associated with Auction 105 that suggest we should propose a separate aggregate reserve price in this auction."⁹ Like with the portion of the AWS-3 spectrum reallocated from Federal use to shared use (1755-1780 MHz), the Commercial Spectrum Enhancement Act requires that auction proceeds attributable to the eligible frequencies be deposited in the Spectrum Relocation Fund.¹⁰

NTIA appreciates the opportunity to work with the FCC on Auction 105 preparation activities to help ensure a successful PALs auction for the bidders and the affected Federal agencies. If you have any questions concerning this matter please do not hesitate to contact me or Peter Tenhula, Deputy Associate Administrator, at 202-482-9142 or ptenhula@ntia.gov.

Sincerely,



Charles Cooper
Associate Administrator
Office of Spectrum Management

⁸ See 47 U.S.C. § 309(j)(16)(B) and 47 C.F.R. § 1.2104(c).

⁹ Draft *Public Notice*, *supra* note 1, at 14.

¹⁰ See 47 U.S.C. § 309(j)(8)(D)(i); *see also* Auction of Advanced Wireless Services Licenses Scheduled for November 13, 2014, Comment Sought on Competitive Bidding Procedures for Auction 97, *Public Notice* in AU Docket No. 14-78, 29 FCC Rcd 5217, 5221-22 ¶¶ 8-10, 5230-31 ¶¶ 46-49 (2014), available at https://docs.fcc.gov/public/attachments/DA-14-669A1_Rcd.pdf; 2018 3.5 GHz R&O, *supra* note 5, at 10642 ¶ 79, 10642 n.313 (reminding parties that the FCC will conduct any auction of PALs in conformity with the general competitive bidding rules set forth in Part 1, Subpart Q of its rules and *citing* Comments of Alaska Communications at 10 (Dec. 28, 2017) on setting a reserve price in light of government incumbents).